

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE <b>J</b>	PAGE <b>1</b>	OF PAGES <b>3</b>
2. AMENDMENT/MODIFICATION NO. <b>0005</b>	3. EFFECTIVE DATE <b>22 February 2002</b>	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. <i>(If applicable)</i>	
6. ISSUED BY  <b>U.S. ARMY ENGINEER DISTRICT, ALBUQUERQUE CORPS OF ENGINEERS 3101 JEFFERSON PLAZA, N.E. ALBUQUERQUE, NEW MEXICO 87109-3435</b>	CODE	7. ADMINISTERED BY <i>(If other than Item 6)</i>		CODE
8. NAME AND ADDRESS OF CONTRACTOR <i>(No., street, county, State and ZIP Code)</i>		( <input checked="" type="checkbox"/> )	9A. AMENDMENT OF SOLICITATION NO.  <b>DACA47-02-R-0001</b>	
		( <input checked="" type="checkbox"/> )	9B. DATED <i>(SEE ITEM 11)</i> <b>16 January 2002</b>	
			10A. MODIFICATION OF CONTRACTS/ORDER NO.	
			10B. DATED <i>(SEE ITEM 13)</i>	
CODE	FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

( <input checked="" type="checkbox"/> )	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation date, etc.)</i> SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER <i>(Specify type of modification and authority)</i>

**E. IMPORTANT:** Contractor ☐ is not, ☐ is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

**PROJECT: FY02 MEDICAL CLINIC ALTERATION, HOLLOMAN AIR FORCE BASE, ALAMOGORDO, NEW MEXICO**

1. This is Amendment No. 5 to Solicitation No. DACA47-02-R-0001; 16 January 2002. The following revisions shall be incorporated into the specifications and drawings. All other provisions shall remain unchanged.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>(Type or print)</i>		16A. NAME AND TITLE OF CONTRACTING OFFICER <i>(Type or print)</i>	
15B. CONTRACTOR/OFFEROR  <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA  BY <i>(Signature of Contracting Officer)</i>	16C. DATE SIGNED

2. SECTION 00700, CONTRACT CLAUSES:

a. On page 115 of 181, delete clause 52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (Dec 2001) in its entirety and replace with clause 52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (Feb 2002), attached hereto.

b. On page 129 of 181, delete clause 52.232-27 Prompt Payment for Construction Contracts (May 2001) in its entirety and replace with clause 52.232-27 Prompt Payment for Construction Contracts (Feb 2002), attached hereto.

3. SPECIFICATIONS: Delete the following listed pages and substitute the pages attached hereto. On the revised pages, for convenience, changes are emphasized by the amendment number in parentheses before and after changes from the previous issue. All portions of the revised (or new) pages shall apply whether or not changes have been indicated.

<u>Delete Page</u>	<u>Insert Page</u>
15951-26	15951-26
15995-16	15995-16

4. DRAWING CHANGES: The following drawings shall be revised as stated below. Proposers are requested to change their drawings for proposal purposes. Successful proposer drawings will be issued to the successful proposer.

a. Sheet A1-6, GENERAL DEMOLITION NOTES, add the following new note:  
"4. Reinforcement detailing and placement shall conform to ACI 315 and ACI 318. Concrete shall conform to ASTM C 94. Concrete work shall conform to ACI 318, part titled "Construction Requirements". Compressive strength in 28 days shall be 3,000 psi. Total air content of exterior concrete shall be between 3 to 5 percent by volume. Slump shall be between 3 and 4 inches. Concrete shall be cured for 7 days after placement. Surfaces shall be steel-troweled to a smooth, even, dense finish, free from blemish including trowel marks."

b. Sheets A2-2 and A13-2, Detail 2: Delete the east-west running dashed line in Room 1215.

c. Sheet A3-1:

(1) Under "Notes in the Remarks Column Are As Follows:", add "E8 Contractor to provide and install blocking."

(2) EQUIPMENT SCHEDULE, insert "E8" in the remarks column for JSN NO. E1500.

d. Sheets A4-1, A4-2, A4-3 and A4-4:

(1) ABBREVIATION LEGEND: Add "GWT Glazed Wall Tile" and "PT Painted" to the abbreviation legend.

(2) In the FINISH SCHEDULE, change material "GWL" to "GWP" and change color from "LGC" to "PT". Color designation will remain the same.

e. Sheet A4-2, Room 1320B, Clinic Lobby: Add ceiling material "ACT" to GWP; add color "AT1" for ACT. In height column, delete 9'-0" and insert "Varies". In the remarks column insert "NOTE D".

f. Sheet A4-5: Under Finish Schedule Notes, add the following new note: "NOTE D: For ceiling heights and material types see Sheet A17-7, REFLECTED CEILING PLAN - BLOCK F".

g. Sheet E7-1:

(1) Add the following to note on the lower left side defining feeds for devices in areas T, U and part of N outlined with heavy phantom line: "Feed all data jacks from REQR-111 and all telephone jacks from TBB-303."

(2) Change "TBB-626" to "TBB-629" on note on the lower middle left side defining feeds for devices in areas L, M and part of N outlined with heavy phantom line.

(3) Delete note in lower middle that reads "Feed all new voice jacks from elect. Room 629. Feed all data jacks from room 716."

h. Sheet E8-5:

(1) Single Line Diagram, Premises Distribution System: Change the number of fiber optic cables in conduit #1, from REQR-716B to REQR-1234, from "1" to "2" cables. Cable type stays the same.

(2) Single Line Diagram, Premises Distribution System, in the center, change the designation number of fiber optic cable from REQR-716B to REQR-1234, from "1-125 OFR" to "1-12S OFR".

i. Sheet E8-6:

(1) Elevation REQR-716B, change termination room for two new cables from fiber optic patch panels from "1234A" to "1234C" and "1324B".

(2) Elevation REQR-111, add one 48-port patch panel for unshielded twisted pair cable and one wire manager between USER EQUIPMENT and WM.

/////////LAST ITEM/////////

**52.225-11 Buy American Act--Balance of Payments Program--Construction Materials Under Trade Agreements (Feb 2002)**

(a) *Definitions.* As used in this clause--

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Designated country" means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark, Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

"Designated country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

"Domestic construction material" means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country construction material" means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

*(b) Construction materials.*

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.
- (2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: \_\_\_\_\_ [*Contracting Officer to list applicable excepted materials or indicate "none"*]
- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--
  - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;
  - (ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

*(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.*

(1)

- (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			
Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
Foreign construction material			
Domestic construction material			

*List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*

*Include other applicable supporting information.*

*\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*

(End of clause)

**52.232-27 Prompt Payment for Construction Contracts (Feb 2002)**

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

*(a) Invoice payments --*

(1) *Types of invoice payments.* For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30<sup>th</sup> day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirement.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any



interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

- (i) Name and address of the Contractor.
- (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)
- (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (*e.g.*, discount for prompt payment terms).
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
- (viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic fund transfer (EFT) banking information.
  - (A) The Contractor shall include EFT banking information on the invoices only if required elsewhere in this contract.
  - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.
  - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If the actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) *Additional interest penalty.*

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)

(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall --

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments* -- If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements*. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors*. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors*. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause --

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown*. A clause requiring each subcontractor to--

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation*. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that --

(1) *Retainage permitted*. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms

and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if --

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall --

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and --

(i) Make such payment within --

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon --

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying --

- (A) The amounts withheld under subparagraph (e)(1) of this clause; and
- (B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until --

- (i) The day the identified subcontractor performance deficiency is corrected; or
- (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) *Third-party deficiency reports --*

(1) *Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause --

- (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
- (ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall --

- (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
- (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying --

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) *Overpayments.* If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(End of Clause)

## 2.12.1.5 Portable Tester

Provisions for connection of a portable tester shall be furnished at each DDC panel location.

## 2.12.1.6 I/O Functions

I/O functions shall be provided as part of the DDC panel and shall be in accordance with the following:

a. The Analog Input (AI) function shall monitor each analog input, perform A-to-D conversion, and hold the digital value in a buffer for interrogation. The A-to-D conversion shall have a minimum resolution of 10 bits plus sign. Signal conditioning shall be provided for each analog input. Analog inputs shall be individually calibrated for zero and span, in hardware or in software. The AI shall incorporate common mode noise rejection of 50 dB from 0 to 100 Hz for differential inputs, and normal mode noise rejection of 20 dB at 60 Hz from a source impedance of 10,000 ohms. Input ranges shall be within the range of 4-to-20 mAdc.

b. The Analog Output (AO) function shall accept digital data, perform D-to-A conversion, and output a signal within the range of 4-to-20 mAdc. D-to-A conversion shall have a minimum resolution of 8 bits plus sign. Analog outputs shall be individually calibrated for zero and span. Short circuit protection on voltage outputs and open circuit protection on current outputs shall be provided.

(5)

Switches for pneumatic control outputs shall provide a connection for an externally generated pneumatic signal. All switches shall be either of a key operated design with the same keying system used for other outputs or otherwise suitably protected from unauthorized access.

(5)

c. The Digital Input (DI) function shall accept on-off, open-close, or other change of state (two state data) indications. Isolation and protection against an applied steady-state voltage up to 180 Vac peak shall be provided.

d. The Digital Output (DO) function shall provide contact closures for momentary and maintained operation of output devices. Closures shall have a minimum duration of 0.1 second. DO relays shall have an initial breakdown voltage between contacts and coil of at least 500 V peak. Electromagnetic interference suppression shall be furnished on all output lines to limit transients to nondamaging levels. Protection against an applied steady-state voltage up to 180 Vac peak shall be provided. Minimum contact rating shall be 1 ampere at 24 Vac.

(5)

e. The pulse accumulator function shall have the same characteristics as the DI. In addition, a buffer shall be provided to totalize pulses and allow for interrogation by the DDC panel. The pulse accumulator shall

(5)

Contractor's Electrical Representative \_\_\_\_\_

Contractor's Testing, Adjusting and Balancing  
Representative \_\_\_\_\_

Contractor's Controls Representative \_\_\_\_\_

Contracting Officer's Representative \_\_\_\_\_

Using Agency's Representative \_\_\_\_\_

## Functional Performance Test Checklist - Single Zone Air Handling Unit

(5) For Air Handling Unit: RTU-1

(5)

1. Functional Performance Test: Contractor shall verify operation of air handling unit as per specification including the following:

a. The following shall be verified when the supply and return fans operating mode is initiated:

(1) All dampers in normal position. \_\_\_\_\_

(2) All valves in normal position. \_\_\_\_\_

(3) System safeties allow start if safety conditions are met. \_\_\_\_\_

b. Occupied mode of operation - economizer de-energized.

(1) Outside air damper at minimum position. \_\_\_\_\_

(2) Return air damper open. \_\_\_\_\_

(3) Relief air damper closed. \_\_\_\_\_

(4) Chilled water control valve modulating to maintain space cooling temperature set point. \_\_\_\_\_

(5) Hot water control valve modulating to maintain space heating temperature set point input from outside air temperature controller. \_\_\_\_\_

c. Occupied mode of operation - economizer energized.

(1) Outside air damper modulated to maintain mixed air temperature set point. \_\_\_\_\_

(2) Relief air damper modulates with outside air damper according to sequence of operation. \_\_\_\_\_

(3) Chilled water control valve modulating to maintain space cooling temperature set point. \_\_\_\_\_

d. Unoccupied mode of operation

(1) All dampers in normal position. \_\_\_\_\_